IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8661 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HASMUKHLAL THAKERSY THAKKAR

Versus

COMMISSIONER OF INCOME TAX (APPEALS-I)

Appearance:
MR NV ANJARIA for Petitioner
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE C.K.BUCH

Date of decision: 15/02/2000

ORAL JUDGEMENT

The only challenge in this petition, at the instance of the original assessee, is against the decision of the

respondent appellate authority, who has recorded the impugned order dated 12.8.97, contending that it is not a speaking order in terms of the provisions of Income Tax Act, 1961.

Learned counsel for the respondent Mr Naik raised the preliminary objection contending that this petition under Article 226 of the Constitution of India, should not be entertained, where, the statutory remedy is available before the Income Tax Appellate Tribunal, against the impugned order of the appellate authority. In our opinion, in this case, this submission, merits acceptance, in absence of any peculiar facts or special circumstances. In another matter, to day, itself we have made a departure from the normal practice of relegating the parties to the statutory remedy available. But, therein, the factual scenario apart, the procedural lapses and non-application of mind had been successfully spelt out and more so when we had admitted the matter long before.

In the light of the facts and circumstances and considering the text and tenor of the impugned order, in our opinion, the petitioner should be relegated to avail the statutory remedy available against the impugned order as we do not find any justifiable ground or reason for exercising our extraordinary, plenary, equitable, discretionary powers under Article 226 of the Constitution of India.

With the result, the petition must fail on the preliminary ground raised by learned advocate Mr Naik. Only on that ground, this petition is dismissed without any order as to costs. Rule discharged.

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(vjn)